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FEDERAL ELECTION COMMISSION  
OCT 20 2016

BEFORE THE FEDERAL ELECTION COMMISSION 2016 OCT 20 PM 12:37

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4 In the Matter of )  
5 )  
6 MUR 7032 )  
7 Lisa Murkowski )  
8 Lisa Murkowski for US Senate )  
9 and Catherine Straub as treasurer )  
10 )  
11 )  
12 )

CASE CLOSURE UNDER THE  
ENFORCEMENT PRIORITY SYSTEM  
CELA

GENERAL COUNSEL'S REPORT

13  
14 Under the Enforcement Priority System, the Commission uses formal scoring criteria as a  
15 basis to allocate its resources and decide which matters to pursue. These criteria include, without  
16 limitation, an assessment of the following factors: (1) the gravity of the alleged violation, taking  
17 into account both the type of activity and the amount in violation; (2) the apparent impact the  
18 alleged violation may have had on the electoral process; (3) the complexity of the legal issues  
19 raised in the matter; and (4) recent trends in potential violations of the Federal Election  
20 Campaign Act of 1971, as amended (the "Act"), and developments of the law. It is the  
21 Commission's policy that pursuing relatively low-rated matters on the Enforcement docket  
22 warrants the exercise of its prosecutorial discretion to dismiss cases under certain circumstances  
23 or, where the record indicates that no violation of the Act has occurred, to make no reason to  
24 believe findings. The Office of General Counsel has determined that MUR 7032 should not be  
25 referred to the Alternative Dispute Resolution Office.<sup>1</sup>

26 For the reasons set forth below, the Office of General Counsel recommends that the  
27 Commission find no reason to believe that Respondents Lisa Murkowski, Lisa Murkowski for  
28 US Senate and Catherine Straub in her official capacity as treasurer (collectively, "the

<sup>1</sup> The EPS rating information is as follows:  
Responses Filed: April 18, 2016 and May 2, 2016.

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1 Committee”) violated the Act or Commission regulations by using official Senate funds to travel  
2 for a campaign-related event.

3 The Complaint alleges that the Committee violated the Act or Commission regulations by  
4 using official Senate funds to pay for Murkowski and six other senators to travel to Bethel,  
5 Alaska, on a military aircraft.<sup>2</sup> Compl. at 1. According to the Complaint, on February 16, 2016,  
6 Murkowski and her Senate colleagues traveled to Bethel, purportedly to conduct a field hearing  
7 for the Senate Energy and Natural Resources Committee. *Id.* The Complaint alleges, however,  
8 that the true reason Murkowski arranged the trip and military transport was “because [she was]  
9 running for re-election.” *Id.* The Complaint asserts that the Senate committee could have, and  
10 would have otherwise, gathered the desired information through an inexpensive teleconference.  
11 *Id.* Therefore, the Complaint concludes, the trip was a misuse of taxpayer money and the  
12 Committee should reimburse the Treasury for the cost of the military transport. *Id.*

13 The Committee acknowledges that the Bethel field hearing and use of a military transport  
14 occurred, but asserts that the trip was for official Senate business and involved no campaign  
15 activity. Resp. at 1-3. The Committee argues that the Complaint is vague and conclusory and  
16 fails to cite any specific campaign activity that took place during the trip. *Id.* at 1-2. The  
17 Committee also argues that the Complaint does not allege a violation of the Act or Commission  
18 regulations. *Id.* at 3. Instead, the Committee believes the Complaint is focused on the alleged  
19 improper use of federal funds. *Id.* at 2.

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<sup>2</sup> The Complainant concludes that Murkowski flew on a military transport based on photographs appearing in *Alaska Dispatch News* and on Murkowski's website. Compl. at 1.

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1 In support, the Committee attached three news articles to its Response about the February  
2 15, 2016<sup>3</sup> Senate field hearing and submitted an affidavit from Stephen Wackowski,  
3 Murkowski's campaign manager. *See id.*, Attach. A-C; Stephen Wackowski Aff. (Apr. 18,  
4 2016). The news articles state that Murkowski, five other senators, and the Energy Secretary  
5 conducted the hearing in Bethel and nearby towns to study the cost of energy in remote areas of  
6 Alaska and to discuss alternative energy sources. Resp., Attach. A-C. None of the articles  
7 reference campaigns or campaign-related activities.<sup>4</sup> *See id.* In the affidavit, Wackowski states  
8 that the Bethel trip was official Senate business and was not paid for or planned by the  
9 Committee. Wackowski Aff. at 1-2. Wackowski further attests that no campaigning occurred  
10 during the trip. *Id.*

11 The Act defines the term "contribution" to mean (1) "any gift, subscription, loan,  
12 advance, or deposit of money or anything of value *made by any person* for the purpose of  
13 influencing any election for Federal office;" or (2) "the payment *by any person* of compensation  
14 for the personal services of another person which are rendered to a political committee without  
15 charge for any purpose." 52 U.S.C. § 30101(8)(A) (emphasis added). The Act excludes the  
16 federal government from the definition of "person." *Id.* § 30101(11).

17 Because the federal government is not a "person" within the meaning of the Act, the  
18 Commission has recognized that it cannot make an illegal contribution to a candidate. *See*  
19 Factual & Legal Analysis at 3 & n.6, MURs 6862 & 6874 (Landrieu) ("[N]o provision of the Act  
20 or Commission regulations governs the use or misuse of official government funds for

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<sup>3</sup> The articles reveal that the correct date of the hearing was February 15, not February 16. Resp., Attach. A-C.

<sup>4</sup> One of the attached articles appears to be the *Alaska Dispatch News* article and corresponding photograph referenced by the Complaint. *See* Resp., Attach. C.

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1 campaign-related travel.”). Therefore, even assuming that Murkowski engaged in campaign-  
2 related activity in Bethel—an allegation the Respondents specifically deny and rebut with a  
3 sworn affidavit—the Committee would not have accepted an illegal contribution from the federal  
4 government under the Act or Commission regulations by using official Senate funds to fly her  
5 there.

6 Moreover, the Commission’s requirement that candidate committees disclose expenses  
7 for campaign-related travel “paid for . . . from a source other than a political committee,” does  
8 not apply “to the extent that a candidate pays for travel expenses using funds authorized and  
9 appropriated by the Federal Government.” 11 C.F.R. § 106.3(b); Interpretation of Allocation of  
10 Candidate Travel Expenses, 67 Fed. Reg. 5,445 (Feb. 6, 2002). Accordingly, the Committee did  
11 not violate the Act by failing to disclose the cost of the military transport on its disclosure  
12 reports.

13 Therefore, this Office recommends that the Commission find no reason to believe Lisa  
14 Murkowski or Lisa Murkowski for US Senate and Catherine Straub in her official capacity as  
15 treasurer violated the Act or Commission regulations with respect to the allegations in this  
16 matter. We also recommend that the Commission close the file as to all respondents and send  
17 the appropriate letters.

18 **RECOMMENDATIONS**

- 19 1. Find no reason to believe Lisa Murkowski, Lisa Murkowski for US Senate, and  
20 Catherine Straub in her official capacity as treasurer violated the Federal Election  
21 Campaign Act or Commission regulations;  
22  
23 2. Approve the attached Factual and Legal Analysis and the appropriate letters;  
24  
25 3. Close the file as to all respondents; and  
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27 4. Send the appropriate letters.  
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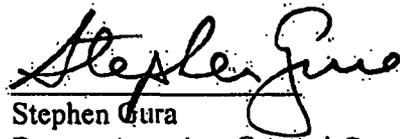
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Lisa J. Stevenson  
Acting General Counsel

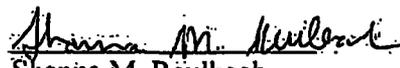
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10.20.16  
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